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NOTIFICATION.

No. R.L. 1628-57, dated Bangalore, 10th December 1948.

Under the provisions of Rule 36 of the Mysore Legislative Rules, 1941, the Dewan has been pleased to order the publication in the *Mysore Gazette* of the Mysore Employers' Liability Bill together with the Statement of Objects and Reasons.

S. KANAKARATNARAJ,
Legal Remembrancer and
Secretary to Government,
Law Department.

THE MYSORE EMPLOYERS' LIABILITY BILL.

A Bill to declare that certain defences shall not be raised in suits for damages in Mysore in respect of injuries sustained by workmen.

WHEREAS it is expedient to declare that certain defences shall not be raised in suits for damages in Mysore in respect of injuries sustained by workmen; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Mysore Employers' Liability Act, 194 .

(2) It extends to the whole of Mysore.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "workman" means any person who has entered into, or works under a contract of, service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, oral or in writing; and

(*b*) "employer" includes any body of persons whether incorporated or not, any managing agent of an employer, and the legal representatives of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has

entered into a contract or service or apprenticeship means such other person while the workman is working for him.

Defence of common employment barred in certain cases.

3. Where personal injury is caused to a workman—

(*a*) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

(*b*) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(*c*) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or

(*d*) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf or in the normal performance of his duties;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

Risk not to be deemed to have been assumed without full knowledge.

4. In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to and understood by the workman and that the workman voluntarily undertook the same.

Saving.

5. Nothing in this Act shall affect the validity of any decree or order of a Civil Court passed before the commencement of this Act in any such suit for damages.

Repeal.

6. The entry relating to the Employers' Liability Act, 1938, (XXIV of 1938), in Schedule B to the Retroceded Area (Application of Laws) Act, 1948, shall be omitted. But anything done or any action taken in exercise of any power conferred by or under the said Employers' Liability Act, 1938, shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act.

Statement of Objects and Reasons.

Under the common law of England in civil suits for damages for injuries sustained by workmen it is open to the employer to plead—

(*a*) the doctrine of common employment, by which the employer is not normally liable to pay damages to a workman for an injury resulting from the default of another workman;

(*b*) the doctrine of assumed risk, by which an employee is presumed to have accepted a risk, if it is such that, he ought to have known it to be part of the risks of his occupation.

The Royal Commission on Labour regarded both these doctrines as inequitable and recommended by a majority that a measure should be enacted abrogating these defences. The Provincial Governments were consulted in 1932 by the Central Government, and all of them were almost unanimously in favour of legislation for the purpose. An Act known as the Employers' Liability Act, 1938, was accordingly passed by the Central Legislature abolishing these defences in the case of all workmen.

There is no such enactment in Mysore, but in the Retroceded Area this enactment was introduced by the Central Government when the area was under its administration, and it still continues to be in force there.

It is considered desirable to have a similar law in Mysore. This Bill has accordingly been brought forward.

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NOTIFICATION.

No. R.L. 1628-50, dated Bangalore, 10th December 1948.

Under the provisions of Rule 36 of the Mysore Legislative Rules, 1941, the Dewan has been pleased to order the publication in the *Mysore Gazette* of the Mysore Employment of Children Bill together with the Statement of Objects and Reasons.

S. KANAKARATNARAJ,
Legal Remembrancer and
Secretary to Government,
Law Department.

THE MYSORE EMPLOYMENT OF CHILDREN BILL.

A Bill to regulate the admission of children to certain industrial employments.

WHEREAS it is expedient to regulate the admission of children to certain industrial employments ;

It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Mysore Employment of Children Act, 194 .

(2) It extends to the whole of Mysore.

Definitions.

2. In this Act—

(*a*) "Occupier" of a workshop means the person who has ultimate control over the affairs of the workshop ;

(*b*) "prescribed" means prescribed by rules made under this Act ;

(*c*) "workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of section 50 of the Mysore Factories Act, 1936, for the time being apply.

Prohibition of employment of children in certain occupations.

3. (1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation connected with the transport of passengers, goods or mails by railway.

(2) No child who has not completed his twelfth year shall be employed, or permitted to work, in any workshop wherein any of the processes set forth in the Schedule is carried on :

Provided that nothing in this sub-section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family only and without employing hired labour or to any school established by, or receiving assistance or recognition from the Government.

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Power to amend the Schedule.

4. The Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any description of process to the Schedule, and thereupon the Schedule shall have force in Mysore as if it has been enacted accordingly.

Notice to inspectors before carrying on work in certain processes.

5. Before work in any of the processes set forth in the Schedule is carried on in any workshop the occupier shall send to the inspector, within whose local limits the workshop is situated, a written notice containing—

(*a*) the name and situation of the workshop,

(*b*) the name of the person in actual management of the workshop,

(*c*) the address to which communications relating to the workshop should be sent, and

(*d*) the nature of the processes to be carried on in the workshop.

Disputes as to age.

6. If any question arises between an inspector and an employer as to whether any child has or has not completed his twelfth or fifteenth year, as the case may be, the question shall, in the absence of a certificate as to the age of such child, granted by a prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority.

Penalty.

7. Whoever employs any child or permits any child to work in contravention of the provisions of section 3 or fails to give notice as required by section 5 shall be punishable with fine which may extend to five hundred rupees.

Procedure relating to offences.

8. (1) No prosecution under this Act shall be instituted except by or with the previous sanction of an inspector appointed under section 9.

(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No Court inferior to that of a Magistrate of the First Class shall try any offence under this Act.

Appointment of Inspectors.

9. The Government may appoint persons to be inspectors for the purpose of securing compliance with the provisions of this Act, and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Power to make rules.

10. (1) The Government may by notification in the Official Gazette and subject to the condition of previous publication make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) regulate the procedure of inspectors appointed under section 9, and

(*b*) make provision for the grant of certificates of age in respect of young persons in employment or seeking employment, the medical authorities which may issue such certificates, the form of such certificate, the charges which may be made therefor, and the manner in which such certificates may be issued :

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned.

Repeal.

11. The entry relating to the Employment of Children Act, 1938, in Schedule B to the Retroceded Area (Application of Laws) Act, 1948, shall be omitted. But anything done or any action taken in exercise of any power conferred by or under the said Employment of Children Act, 1938, shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act.

THE SCHEDULE.

(See *Sections 3, 4 and 5*).

List of Processes.

1. Bidi-making.
2. Carpet-weaving.
3. Cement manufacture, including bagging of cement.
4. Cloth-printing, dyeing and weaving.
5. Manufacture of matches, explosives and fire works.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool cleaning.

Statement of Objects and Reasons.

The twenty-third session of the International Labour Conference adopted a convention in which a special Article for India was inserted fixing the minimum age at which children may be employed or may work in the transport of passengers, goods or mails by rails, or in the handling of goods at docks, wharves or quays at 13 years.

An Act was accordingly passed by the Central Legislature in 1938 prohibiting the employment of children under 15 in occupations connected with the transport of goods, passengers, or mails on railways and for raising the minimum age for handling goods in docks from 12 to 14, the age recommended by the Royal Commission on Labour. A simple procedure enabling employees to safeguard themselves against transgression of the Act by furnishing themselves with or requiring candidates for employment to possess certificates of age is also provided in the Act.

The Royal Commission on Labour drew attention to the serious abuses prevalent in may establishments not subject to the Factories Act. In particular mention is made of the employment of children often at a very early age in various offensive and in some cases, dangerous occupations. An enactment known as the Employment of Children (Amendment) Act, 1939, was accordingly passed by the Central Legislature to prohibit the employment of children under 12 on premises carrying on occupations enumerated in the schedule which have been selected either because they are unhealthy or commonly accompanied by exploitation of child labour. The occupations in which child labour is prohibited are

1. Beedi making;
2. Carpet weaving;
3. Cement manufacture including bagging of cement;
4. Cloth printing, dyeing and weaving;
5. Manufacture of matches, explosives and fire works;
6. Mica cutting and splitting;
7. Shellac manufacture;
8. Soap manufacture;
9. Tanning;
10. Wool cleaning.

There is no enactment in Mysore on the lines of the Employment of Children Act, except in the Civil Station, Bangalore, where it was introduced while the area was under the administration of the Crown Representative. It is considered desirable to have similar legislation in Mysore. This Bill, which closely follows the Central Act of 1938 as amended by the Act of 1939, has accordingly been brought forward.